Order ¶ 111. Although BellSouth asserts in its application that it has provided CLECs with complete business rules (see Br. 27 and Stacy OSS Aff. ¶¶ 104-05), that assertion is false.

For example, the "Local Exchange Ordering Implementation ("LEO") Guide" on which BellSouth heavily relies (Br. 27-28) does not contain all the business rules that CLECs need. Bradbury Aff. ¶ 67. Moreover, BellSouth has now conceded that the LEO guide -- limited as it is -- is not accurate. In a recent message to AT&T, a BellSouth representative stated that BellSouth was aware of and working to correct "'discrepancies'" in the LEO user guide, and further advised AT&T not to use a related compendium of business rules, the "'LEO User Requirements for Rejects,'" because it had not been updated since last November and now is "'outdated.'" Id. ¶¶ 68-69 (quoting BellSouth message).

AT&T's experience reveals the anticompetitive consequences of BellSouth's admitted failure to provide complete business rules. BellSouth has not provided AT&T with the business rules AT&T needs to establish directory listings when AT&T, rather than BellSouth, has assigned new telephone numbers to new customers. Bradbury Aff. ¶¶ 79-82; Hassebrock Aff. ¶¶ 66-69. Similarly, BellSouth has failed to provide business rules to enable AT&T to submit orders disconnecting numbers ported to its ADL customer; to provide up-to-date specifications for building a CGI interface; or to order all types of even relatively simple directory listings. Bradbury Aff. ¶¶ 83-88; Hassebrock Aff. ¶¶ 54-55. And in Kentucky, where BellSouth is required to provide AT&T with the ability to order combinations of unbundled elements, all of AT&T's test orders sent via EDI through July 9 were rejected and most of these rejections were for "errors" that are the direct result of BellSouth's failure to provide AT&T with the necessary business rules. Bradbury Aff. ¶¶ 71-78, 276-77.

2. BellSouth Has Not Deployed Interfaces That Provide CLECs With Nondiscriminatory Access To Its OSS

The lack of change control procedures and complete business rules means that CLECs cannot take advantage of all of the functionality that BellSouth's systems ostensibly provide. But even perfect information would not cure all of the defects in those systems. Despite some improvements in recent months, BellSouth's interfaces still do not offer CLECs access that is equivalent to what BellSouth enjoys. They do not offer equivalent functionality, and they are overly dependent on manual processing.

(a) Pre-ordering: BellSouth has not yet met its obligation to deploy pre-ordering interfaces that offer CLECs access that is "equivalent to the access provided to [BellSouth's] retail operations in terms of quality, accuracy, and timeliness." South Carolina Order ¶ 148. Since its last application, BellSouth has deployed EC-Lite, an improvement in one sense over BellSouth's proprietary LENS interface because it can be integrated with a CLEC's own systems and with the EDI ordering interface.

Nevertheless, rather than design EC-Lite to provide nondiscriminatory access, BellSouth insisted on delivering only a truncated form of EC-Lite that continues to deny competitors access to certain features and functionalities of BellSouth's OSS that CLECs have long sought and must obtain to have nondiscriminatory access. For example, the Commission previously found it to be "a significant deficiency" that the LENS interface did not provide CLECs the ability that BellSouth's representatives have to obtain a firm, calculated due date for when service will be installed. South Carolina Order ¶¶ 168, 167-73; Louisiana Order ¶ 56. Despite this finding, and despite AT&T's requests that BellSouth incorporate this functionality into EC-Lite, BellSouth refused to do so. See Bradbury Aff. ¶¶ 120-26 & n.61. BellSouth's various rationalizations for this refusal are either factually incorrect, misleading, or irrelevant, as Mr.

Bradbury explains in detail. Id. ¶¶ 127-37. The reality is that EC-Lite as deployed by BellSouth is inherently discriminatory because CLECs remain "unable to provide accurate due date information" to their customers, "while BellSouth is able to" do so -- making the CLEC "appear to be a less efficient and responsive service provider than its competitor, BellSouth." South Carolina Order ¶ 169; see Bradbury Aff. ¶¶ 119, 121-25, 138-39.

BellSouth's EC-Lite contains a number of other important defects that also deny CLECs equivalent access. EC-Lite does not permit CLECs to view the CSRs of UNE-customers; it does not present CSR information in a recognizably fielded format using industry standard codes; it denies CLECs access to certain important CSR information to which BellSouth's representatives have access; and it fails to provide other important pre-ordering functionalities that BellSouth's representatives enjoy. Bradbury Aff. ¶¶ 142-55.

As for LENS, it contains all of the above deficiencies, plus others. For example, BellSouth's "View-All" option (Br. 22) requires use of every pre-ordering function, and thus has not eliminated the lack of parity that resulted from having to validate a customer's address before accessing each pre-ordering function. See South Carolina Order ¶¶ 174-75; Bradbury Aff. ¶¶ 167-69. In addition, contrary to BellSouth's claims (Br. 27), the CGI specifications that BellSouth has provided still do not enable CLECs to integrate LENS with their own systems and with the EDI ordering interface in a nondiscriminatory fashion. Id. ¶¶ 159-66. Those CGI specifications require use of the underlying Hyper Text Markup Language ("HTML") presentation data stream, which the Commission previously found "does not enable a new entrant to deploy an integrated pre-ordering and ordering interface that is equivalent to the integrated interface used in BellSouth's retail operations." South Carolina Order ¶ 162; see id. ¶ 153; Bradbury Aff. ¶ 159. BellSouth's reliance (Br. 27) on the test report of Albion International,

Inc., is unavailing, for the limited and unsupervised work that Albion performed does not begin to address the range of concerns that the Commission and CLECs have raised. Id. ¶¶ 160-66.

(b) Ordering and Provisioning: BellSouth also has not yet deployed an interface that provides CLECs with non-discriminatory access to the ordering and provisioning functions of BellSouth's operations support systems. EDI is the electronic interface approved by the Ordering and Billing Forum ("OBF") for transmitting local service requests; it is non-proprietary (unlike LENS), and it is therefore the interface to which the Commission has repeatedly looked for evidence of nondiscriminatory electronic access to ordering and provisioning. As deployed by BellSouth, however, EDI fails to offer CLECs nondiscriminatory access.

The Commission's prior rejection of BellSouth's application rested in significant measure on the extraordinary degree of manual intervention required by both CLECs and BellSouth in the processing of local service requests submitted via EDI. South Carolina Order ¶¶ 101-46; Louisiana Order ¶¶ 23-46. This core problem remains true today. Even though BellSouth has had to contend with only a trickle of orders, it still has been unable to automate its processes for handling them.

For example, the "substantial disparity" in flow-through rates that the Commission found in the South Carolina and Louisiana proceedings has only gotten worse since then. South Carolina Order ¶ 107; Louisiana Order ¶ 24; see Bradbury Aff. ¶¶ 196, 242-48; Pfau-Dailey Aff. ¶¶ 74-75. BellSouth tries (as it did last time) to disguise this fact by indiscriminately lumping together EDI orders with LENS orders (Br. 26), a meaningless statistic because LENS is unsuitable for large-volume CLECs. Bradbury Aff. ¶¶ 218, 242-43 & Att. 37 (detailing limitations of LENS). Moreover, even with that improper aggregation, BellSouth falls short of

providing parity. Id. ¶¶ 243-44; Pfau-Dailey Aff. ¶¶ 75-76. BellSouth also continues to rely (Br. 26) on its same unproven and incorrect assertions about "CLEC" errors that, in reality, are often caused by BellSouth's abdication of its change-control and business-rule responsibilities. South Carolina Order ¶ 108; Louisiana Order ¶ 29; Bradbury Aff. ¶¶ 46, 58-59, 73-78, 89-109, 245-48. For example, BellSouth's own data show that BellSouth-caused errors have increased approximately 70 percent since March, 1998. See id. ¶ 247.

Moreover, when it comes to notifying CLECs about rejects, errors, and jeopardies, the same defective reliance on manual processes for which the Commission has repeatedly criticized BellSouth persists today. BellSouth still does not provide any type of electronic notice of jeopardies caused by BellSouth, even though these are the jeopardy notices a CLEC particularly needs. Bradbury Aff. ¶¶ 190-93. And although BellSouth now provides some fully automated rejection and error notices over EDI, most of these notices are not generated electronically but instead are manually typed into the system by BellSouth representatives. Id. ¶ 188. BellSouth's data suggest, in fact, that more than 80 percent of rejection notices sent to CLECs have been re-keyed manually by BellSouth. Id. This limited "mechanization," moreover, has actually led to poorer operational performance than BellSouth's fully manual processing. Id. ¶¶ 250-51.

BellSouth's EDI discriminates against CLECs in other important respects. CLECs cannot use EDI today to place orders for most complex services; they must manually submit those orders to BellSouth and enter them into their own systems, and are dependent on a BellSouth account team actually to place the order. Id. ¶¶ 197-99. Contrary to BellSouth's claims (Br. 21 n.20), the process is discriminatory because CLECs, unlike BellSouth, cannot input their orders electronically. Notably, the Georgia PSC has ordered BellSouth to break this ordering bottleneck, but to date it has not done so. Bradbury Aff. ¶ 199.

Similarly, only a small fraction of the UNEs that BellSouth nominally makes available can be ordered over EDI or EXACT, and BellSouth has still provided no workable means for ordering combinations of UNEs, whether combined by BellSouth or by a CLEC. Id. ¶¶ 200-03. Resellers face similar restrictions; they cannot use EDI to order services that directly accounted for more than a billion dollars of revenue to BellSouth. Id. ¶¶ 205-06 & n.96. And all users of BellSouth's EDI must still contend with discriminatory batch-processing and inadequate information on firm order confirmation and completion notices. Id. ¶¶ 207-16.

(c) Maintenance and Repair: The Commission has not previously addressed maintenance and repair interfaces, and understandably so. The deficiencies in Ameritech's and BellSouth's pre-ordering and ordering interfaces are so profound, and the obstacles to market entry created by these BOCs' pervasive checklist noncompliance so formidable, that CLECs simply lack the presence in the market to generate substantial experience with electronic access to BOC systems for maintenance and repair.

Nevertheless, even with limited experience, it is already clear that BellSouth has not yet deployed repair and maintenance interfaces that offer nondiscriminatory access. For example, BellSouth's proprietary TAFI system is not a machine-to-machine interface and can be used only for a limited range of resale services and UNEs; its T1M1 IXC interface is not designed for local service and provides no flow-through to BellSouth's legacy systems; and its ECTA gateway does not currently include the full range of functionality that TAFI provides, and cannot practicably be used in view of the current limited volume of transactions, which is due to BellSouth's noncompliance with the Act. Bradbury Aff. ¶¶ 220-28.

(d) Billing: BellSouth continues to deny CLECs nondiscriminatory access to billing in two important respects. First, despite repeated requests by AT&T and

repeated promises by BellSouth, BellSouth still has not demonstrated that it can provide AT&T with daily, electronically generated, and accurate reports on the usage of unbundled switching for access. Bradbury Aff. ¶¶ 231-32, 263; Hamman Aff. ¶¶ 19-21. AT&T needs these reports, provided by BellSouth's "ADUF" (Access Daily Usage File), to generate access bills. BellSouth has failed to generate such electronic reports daily. Bradbury Aff. ¶ 231; Hamman Aff. ¶¶ 19-21. Moreover, it admits it cannot yet do so on intraLATA calls that originate on its network. Id. ¶ 19; Bradbury Aff. ¶ 232. The access that BellSouth claims it "provides" to ADUFs (Br. 31) is thus woefully inadequate.

Second, BellSouth has not yet provided CLECs with usage data for flat rate calls. Bradbury Aff. ¶ 233. Despite BellSouth's protests, it is technically feasible to provide this data, and the Georgia PSC has ordered BellSouth to do so. Id. ¶¶ 233-34.

Finally, with respect to the bills that BellSouth is capable of generating, BellSouth's performance has been consistently inaccurate and incomplete. Bills for resale have been out of balance; have included errors (amounting in one instance to hundreds of thousands of dollars); and have been rendered for services already paid for. Bradbury Aff. ¶ 265. Bills for UNEs have been similarly defective, with even the sample bill tendered by BellSouth to prove compliance containing some of these defects. Id. ¶¶ 266-68.

3. BellSouth's Systems Are Not Operationally Ready

The second part of the Commission's two-part inquiry is whether the BOC's systems "are actually handling current demand and will be able to handle reasonably foreseeable demand volumes." Ameritech Michigan Order ¶ 138. As noted at various points above, BellSouth's reports of its performance to date demonstrate that CLECs are not receiving nondiscriminatory access to any of BellSouth's OSS functions. Most notably, BellSouth's pre-ordering response

times, order flow-through, receipt of firm order confirmation, order rejection, jeopardy notices, and billing accuracy all remain fundamentally deficient. See Bradbury Aff. ¶¶ 238-54, 265-68; Pfau-Dailey Aff. ¶¶ 66-76. Because these are the results of "actual commercial usage" of BellSouth's systems, and are thus the "most probative evidence" of "commercial readiness," they prove that BellSouth's systems are not operationally ready. Ameritech Michigan Order ¶ 138.

This deficient performance is of exceptional significance because it is occurring at a time when new entrants have placed no stress upon BellSouth's systems. AT&T has been unable to pursue intensive, state-wide entry in any BellSouth state due to the practical unavailability of gaining access to unbundled network elements; AT&T's ability to compete on a facilities-basis with ADL, inherently more limited than UNE-based entry, has run into numerous BellSouth roadblocks. No other CLEC has placed significant volumes of orders to BellSouth. Yet even at a time when BellSouth's systems are not under pressure, BellSouth has not been able to deliver parity.

For this reason alone, BellSouth's claims (Br. 20) to have "subjected" its systems to "extensive testing," and to have developed systems that have the "capacity" to handle order volumes several times greater than the volumes handled today, should be disregarded. Where actual usage demonstrates lack of parity, tests and projections carry no weight. Ameritech Michigan Order ¶ 138.

Moreover, past experience demonstrates that BOC projections of capacity are unreliable. When AT&T accelerated resale-based entry in California, Pacific Bell's systems could not handle the increase in order volume and volatility -- despite having publicly proclaimed that the systems were capable of handling volumes far in excess of what they actually received. See Bradbury Aff. ¶ 290. Similarly, in the Ameritech Michigan Order, ¶¶ 189-99, the Commission

discussed in detail the stark deterioration in Ameritech's performance when it received "surges in orders" that were nevertheless well-within the stated capacity of Ameritech's systems. Id. The painful lesson is that neither AT&T nor any CLEC can afford risking its reputation by basing mass market entry upon manual processing. For this reason alone, the Commission should demand rigorous proof, including proof based upon actual usage, that a BOC's systems can electronically process high volumes and unpredictable surges of CLEC orders as seamlessly and accurately as they process the BOC's orders, before granting relief under section 271.

Finally, the Commission should use BellSouth's actual evidence of testing (including a report it withheld from the Commission) and BellSouth's capacity-projections to illustrate what future section 271 applicants should not rely upon and expect approval. The actual results of BellSouth's testing with MCI (which BellSouth only summarily discloses) and with AT&T (which it conceals) demonstrate that its EDI interface is not ready. Bradbury Aff. ¶¶ 272-77; Hassebrock Aff. ¶¶ 41-44. The Ernst & Young report, admittedly conducted "under the direction of Mr. William Stacy" (Putnam Aff. ¶ 9), is a model of the narrow-scope, undocumented, and non-independent "third-party review" to which the Commission has previously refused to accord weight. Ameritech Michigan Order ¶ 216; see Bradbury Aff. ¶¶ 280-82. Notably, BellSouth does not include in its submission another recent third-party report, by BellCore, that concluded (contrary to Ernst & Young) that BellSouth's software development processes were "undefined (ad hoc) and unstable," are "constantly being changed or modified," and therefore, on a "maturity scale" of 1 to 5, rated only a "1." See Bradbury Aff. ¶ 236. Finally, BellSouth's capacity estimates, for numerous reasons set forth in detail in Mr. Bradbury's affidavit, are if anything more arbitrary and unreliable than those the

Commission previously rejected. Id. ¶¶ 283-322; see, e.g., id. ¶¶ 295-98 (discussing BellSouth's arbitrary increases and decreases in estimates of LENS and EDI capacity).

4. BellSouth Has Not Provided The Requisite Performance Data

Besides proving that BellSouth is not providing nondiscriminatory access, BellSouth's performance data are deficient in other important respects. Although BellSouth proposes to report its performance based on most of the measurements that the Commission has required in its prior section 271 decisions and in its recent Performance Measurements NPRM, it has not followed through on this proposal. For some measures, BellSouth provides no data at all, while for others it omits the data showing its own retail performance that are essential to prove parity.[11] Further, BellSouth has failed to provide either any methodology for determining when differences in performance constitute nondiscriminatory performance or the statistical information that would be required for others to make that determination.

BellSouth presents little or no data for its proposed measurements of the average times for returning order completion notices, for returning jeopardy notices, for coordinated customer conversions, and for various collocation arrangements, as well as for its measurements for percentage of orders given jeopardy notices; these all remain "under development." Pfau-Dailey Aff. ¶¶ 22-29, 39-41, 52. Other measurements are simply omitted. For example, BellSouth reports data on pre-ordering response time only for its LENS interface and not for the EC-Lite interface, which is significant because AT&T's data show that EC-Lite performance is substantially worse than LENS. Id. ¶¶ 57-58, 68; Bradbury Aff. ¶¶ 238-40. In addition, BellSouth has excluded at least two other measures promised in its Louisiana SGAT -- the

[11] See, e.g., Louisiana Order, ¶¶ 33, 38, 40; South Carolina Order, ¶¶ 118, 125-126; Ameritech Michigan Order ¶¶ 187, 212.

number of service requests per order and provisioning order accuracy. Pfau-Dailey Aff. ¶¶ 38, 53.

BellSouth also continues to refuse to provide comparative data for a number of measurements, including the timeliness of firm order confirmations, order rejections, order jeopardies, order completions, and the provisioning and maintenance of unbundled network elements, notwithstanding the clear prior orders of this Commission that comparative data for these measurements are essential to any section 271 application. Pfau-Dailey Aff. ¶¶ 24, 30-37, 43-47. Further, BellSouth's recurring refrain that no analogues exist for these measures is clearly refuted in BellSouth's own application. For example, directly contradicting its claim that "no [BellSouth] analog exists" for jeopardy notices, BellSouth's own witness states in a second affidavit that CLECs "receive notification of service jeopardies in substantially the same time and manner as BellSouth." Id. ¶ 30, quoting Stacy OSS Aff. ¶ 150. All of these functions have analogues in BellSouth's retail operations that could be measured and compared to BellSouth's performance for CLECs, but BellSouth refuses to provide that comparative data.

In addition to lacking the required data, BellSouth's application is wholly devoid of any analysis or methodology for determining whether there is or is not discrimination. Despite the Commission's tentative conclusion that merely "reporting averages of performance measurements alone, without further analysis," often will not reveal whether differences in performance reflect discrimination, and may even "mask" discrimination, Performance Measurements NPRM ¶ 34, BellSouth offers no analysis of its performance data or methodology by which conclusions about discrimination could be drawn. Pfau-Dailey Aff. ¶¶ 61-63. Further, BellSouth submits none of the information needed to perform a statistical analysis of the data, such as the number of observations, distribution shapes, and variances for the populations to be compared. Id. ¶¶ 61,

63. For this reason as well, BellSouth's data cannot support a finding that parity is being provided to CLECs.

C. BellSouth Does Not Provide Nondiscriminatory Access To Other Unbundled Elements

Regardless of how the loop and switch are combined, BellSouth has not yet developed and implemented the capabilities to provision the local switching element on a nondiscriminatory basis. See § 271(c)(2)(B)(ii), (vi); 47 C.F.R. § 51.319(c). In particular, BellSouth has yet to demonstrate that it can provide CLECs with the information they need to bill and collect both exchange access charges and reciprocal compensation. Similarly, BellSouth has failed to provide either customized routing or the inherent features, functions and capabilities of the local switch on nondiscriminatory terms and conditions.

1. Billing For Access Services

The Commission has ruled that CLECs may use unbundled network elements to provide exchange access services (47 C.F.R. §§ 51.307(c); 51.309(b)) and bill other carriers for those services and collect access revenues. Local Competition Order ¶ 363 n.772 ("where new entrants purchase access to unbundled network elements to provide exchange access services . . . the new entrants may assess exchange access charges to IXCs originating or terminating toll calls on those elements."); see also Third Order on Reconsideration ¶ 38 ("where a requesting carrier provides interstate exchange access services . . . the requesting carrier is entitled to assess originating and terminating access charges to interexchange carriers, and it is not obligated to pay access charges to the incumbent LEC"). Despite this clear obligation, BellSouth remains unable, almost two years after the Commission released the Local Competition Order, to demonstrate that it can provide CLECs with the information they need to bill for access services.

Indeed, BellSouth acknowledged only two months ago that it was required to provide the information CLECs need to bill for intraLATA access charges, and remains incapable of satisfying it. Hamman Aff. ¶¶ 18-19. BellSouth concedes that it has not developed, implemented, or tested a system capable of providing the usage detail necessary to enable CLECs to bill and collect access charges when they terminate intraLATA toll calls that originated on BellSouth's network, and BellSouth does not expect to have such a capability until October 31, 1998. Scollard Aff. ¶ 21. It also has not bound itself to any interim method for estimating such data. Hamman Aff. ¶ 19. Its promises of future performance do not satisfy its obligation today to provide access to the unbundled local switching element in accordance with the Commission's requirements. See Ameritech Michigan Order ¶ 55.

In addition, BellSouth has yet to demonstrate that it is capable of providing the usage detail necessary on interLATA or intraLATA calls that originate on the networks of other carriers. BellSouth asserts that it has developed an "Access Daily Usage File (ADUF) . . . to provide the usage data that would enable CLECs to bill an interexchange carrier for the provision of inter-state access," and claims that it has "had the capability to provide the ADUF . . . since December 19, 1997." Scollard Aff. ¶ 21. But the joint tests necessary to determine the accuracy of these records only began on June 22, 1998, and while BellSouth states that these tests have been completed, it failed to provide AT&T with the test call records, making it impossible to confirm the accuracy of the usage data BellSouth's system captured. Hamman Aff. ¶ 21. Because BellSouth still had not provided this information as of the date it filed its application, it has necessarily failed to demonstrate that it is capable of providing accurate access usage data necessary to enable UNE purchasers to bill for either originating or terminating exchange access on interLATA calls. E.g., Ameritech Michigan Order ¶ 57.

2. Billing For Reciprocal Compensation

To collect reciprocal compensation when it terminates local calls, a CLEC using unbundled local switching must obtain terminating usage data from BellSouth indicating how many calls/minutes its customers received and what carriers originated those calls. In this application, however, BellSouth does not claim that it can provide such information, nor does it claim that it is developing such a capability. Hamman Aff. ¶ 23. Instead, BellSouth claims CLECs do not need such data because "reciprocal compensation payments due from BellSouth are offset by payments due to BellSouth for CLECs' use of UNEs to terminate traffic. Because no payments are made for this traffic, no traffic data is provided." Varner Aff. ¶ 192. This assertion, however, falls far short of demonstrating that BellSouth is providing UNE purchasers with even a reasonable surrogate for the information necessary for reciprocal compensation.

To begin with, BellSouth fails to explain how the netting process it proposes would work when a CLEC terminates calls that originate on the facilities-based or UNE-based networks of other CLECs. In such circumstances, the terminating CLEC is owed compensation by another CLEC, not by BellSouth. Hamman Aff. ¶ 25. Moreover, BellSouth has not legally obligated itself to abide by, let alone implemented, a system or method that provides UNE purchasers with even a reasonable surrogate for the information they need for reciprocal compensation. BellSouth and AT&T have never reached any formal agreement on acceptable arrangements that would enable UNE purchasers to collect such compensation. Id. ¶ 26. And BellSouth identifies no formal agreements that it has entered into with any other CLEC concerning reciprocal compensation arrangements for UNE purchasers. In these circumstances, BellSouth's unilateral announcement of an incomplete and non-binding proposal provides no basis for a finding that BellSouth has enabled UNE purchasers to collect reciprocal compensation.

3. Customized Routing

BellSouth has failed to provide customized, or selective, routing on a nondiscriminatory basis. See Local Competition Order ¶ 412 (incumbent LEC must provide all "technically feasible customized routing functions" provided by the switch). AT&T intends to use its own OS/DA centers when it provides local exchange services, because it believes those centers are a valuable asset that differentiate its services from those of its rivals. Hamman Aff. ¶ 28. Accordingly, AT&T needs operator and directory assistance calls placed by its local service customers to be routed from BellSouth's switches to AT&T's OS/DA centers.

BellSouth claims that customized routing "will be provided through BellSouth's proposed AIN-based Selective Carrier Routing Service, upon successful completion of the trial of that service, and in the interim through line class codes to any requesting carrier." Varner Aff. ¶ 133. Neither alternative provides nondiscriminatory access.

With respect to line class codes, BellSouth has imposed unnecessary and discriminatory ordering requirements that cause AT&T's orders to drop out of BellSouth's electronic systems. BellSouth requires AT&T to identify, for each new customer, the specific line class code that the BellSouth switch serving that customer uses to provide customized routing to AT&T's OS/DA center. BellSouth requires this identification even though (1) the Local Service Request form (LSR) AT&T submits provides all the information BellSouth needs to determine the switch-specific code and (2) BellSouth's employees need not provide such information when placing orders for BellSouth's customers. Hamman Aff. ¶¶ 31-33. This unnecessary requirement not only forces AT&T employees to waste time performing table look-ups that BellSouth employees need not perform, but ultimately causes every one of AT&T's electronic orders to drop out of BellSouth's electronic systems for manual processing. Id. ¶¶ 33-35. BellSouth's unnecessary

ordering requirement is thus plainly discriminatory because it imposes burdens and expenses on AT&T that BellSouth does not incur and renders the processing of AT&T's orders far less efficient than the processing BellSouth provides to itself

As for BellSouth's AIN proposal, it is not yet operational, and for that reason alone is inadequate to satisfy the checklist. Initial tests reveal, moreover, that BellSouth's implementation and architecture will result in a one-to-two second increase in post-dial delay for operator and directory assistance calls routed to AT&T's OS/DA centers. Hamman Aff. ¶ 40. Although BellSouth attempts to downplay this problem (see Affidavit of W. Keith Milner ¶ 87), the Commission has concluded that "post-dial delay of 1.3 seconds is significant," and could lead consumers to form a negative impression of the business they are calling. Telephone Number Portability Reconsideration Order ¶¶ 22-23. The Commission has also recognized that incumbent LECs may "discriminate against competitors in a manner imperceptible to end users, but which still provides incumbent LECs with advantages in the marketplace." Local Competition Order ¶ 224. In addition, because AT&T will pay usage-based rates for originating calls through unbundled switching, modest increases in seconds of originating usage could, over time and thousands of calls, add up to significant costs that AT&T, but not BellSouth, will incur. Finally, rates for the AIN method remain unspecified and unapproved. There is thus no basis for concluding that BellSouth's AIN proposal satisfies its obligation to provide customized routing. See Ameritech Michigan Order ¶ 55

4. Restrictions On The Use Of Switch Features And Functions

BellSouth today is free to choose which switch features and functions it should offer to its customers. It discriminates against CLECs by denying them (and their customers) access to the full functionality of its switches. Indeed, in its filing, BellSouth asserts that it is free to

refuse to provide any features or functions that it does not offer at retail, even if those features are "loaded and activated in [the] switch." Varner Aff. ¶ 125, Fig. 1. BellSouth's own submission, therefore, demonstrates that it is not providing unbundled switching in accordance with the requirements of the Act. The Commission has ruled that the local switching element "includes all vertical features that the switch is capable of providing," and that a purchaser of unbundled switching "obtains all switching features in a single element on a per-line basis." Local Competition Order ¶ 412 (emphases added).[12] Despite these clear requirements, BellSouth admits that a purchaser of unbundled switching does not obtain all features that its switches are capable of providing -- *i.e.*, those features that are currently installed -- but rather only the subset of installed features that BellSouth has activated and offers to its retail customers. Relying on this policy, BellSouth has refused since last September to provide AT&T with an installed switch feature, or with any explanation for why it could not provide the feature in the manner AT&T requested. See Hamman Aff. ¶¶ 46-48.

This violation of the Act's requirements is not remedied by BellSouth's "offer" to provide currently installed switch features through the bona fide request ("BFR") process. See Varner Aff. ¶ 126. The BFR requirement conflicts with AT&T's interconnection agreement and is discriminatory and anticompetitive. Hamman Aff. ¶ 51.[13] Under the BFR process, BellSouth can take up to 30 days just to provide "a preliminary analysis" of the request, and has 90 days

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[12] AT&T's interconnection agreement mirrors these requirements, defining unbundled switching to include "all of the features, functions, and capabilities that the underlying BellSouth switch that is providing such Local Switching function is then capable of providing." Interconnection Agreement, Att. 2, § 7.1.1 (emphases added).

[13] See U.S. West Comm., Inc. v. AT&T Comm., Order On Cross-Motions For Summary Judgment, p. 27, No. C97-1320R (D. Wash. Jul. 21, 1998) (U S West may not require BFR for shared transport).

from receipt of the request to provide a "firm availability date." Interconnection Agreement, Att. 14, §§ 1.4, 1.5 (emphasis added). Thus, a CLEC must wait months to obtain currently installed features. BellSouth, by stark contrast, can activate such features for itself in a matter of hours if not minutes. Hamman Aff. ¶ 51.

The discriminatory delays inherent in the BFR process plainly impede the introduction of new services that BellSouth is not offering. The Commission permitted "an upfront purchase of all local switching features" in order to "speed entry by simplifying practical issues such as the pricing of individual switching features." Local Competition Order ¶ 423. But if a CLEC determines that there are market needs that BellSouth is not satisfying, it cannot meet those needs without informing BellSouth of its competitive plans and waiting months for BellSouth to process its request. In the meantime, BellSouth can introduce the new services and lock up customers while the CLEC's request wends its way through the BFR quagmire. CLECs will thus lose the competitive jump they would otherwise have in service innovation.

5. Failure to Provide Access To Unbundled Network Elements That Include Embedded Intellectual Property

BellSouth has imposed yet another improper and potentially enormous obstacle to the practical use of any or all of its unbundled network elements, whether individually or in combination. In filings before the Commission, BellSouth claimed that "third party intellectual property rights are, or would be, implicated in at least some sales of unbundled network elements."[14] BellSouth argued that it is the responsibility of AT&T and other new entrants, not BellSouth, to contact BellSouth's equipment and software vendors "and obtain from [these]

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[14] See BellSouth Reply Comments, In re the Petition of MCI for Declaratory Ruling, CC Docket 96-98, CCB Pol. 97-4, at 3 (May 6, 1997).

third parties whatever licenses are necessary for [them] legitimately to" use those elements.[15] This extraordinarily burdensome and discriminatory requirement, which BellSouth nowhere mentions let alone defends in its section 271 application,[16] permits BellSouth to impose enormous costs and delays upon new entrants that will substantially deter, if not defeat, the use of unbundled network elements. Hamman Aff. ¶¶ 62-72.

In essence, BellSouth's position is that it is free to procure or accept language in contracts with its vendors that, expressly or by omission, effectively imposes liability on any new entrant seeking to use the elements of BellSouth's network in the same manner BellSouth uses them. This is discriminatory. Although BellSouth is free to negotiate its contracts with equipment vendors in a competitive market, new entrants seeking to use unbundled network elements are not. They will be forced to go to the dozens of vendors BellSouth has selected, each of which BellSouth has transformed into a bottleneck supplier, free to demand exorbitant fees for a license that the new entrant has no choice but to acquire in order to use BellSouth's network elements. Hamman Aff. ¶ 71. The licensing fees that new entrants will pay, therefore, will be (1) duplicative of the costs BellSouth has already passed on in its unbundled network element prices; (2) greater than the fees that BellSouth had to pay; and (3) compounded by the costs of uncertain and delayed entry. Id. ¶ 72.

BellSouth's purported concerns about intellectual property liability may well have no substantive merit. Because, as the Commission has recognized, "incumbent LECs have little

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[15] See id. at 6.

[16] AT&T has raised this issue in filings before the Georgia Public Service Commission and in correspondence with BellSouth to narrow disputed issues in this proceeding. See Hamman Aff. ¶ 64 & Atts. 6 and 7. BellSouth's failure to defend its position in its application may effectively deny AT&T an opportunity to respond to arguments that BellSouth will raise for the first time in its reply.

incentive to facilitate the ability of new entrants . . . to compete against them" (Local Competition Order ¶ 11), BellSouth and other incumbents have every incentive to adopt, and to urge their vendors to adopt, a narrow construction of existing licenses.[17] It is clear, though, that BellSouth's claims -- however suspect -- serve to undermine the availability of any unbundled network element. No prudent entrant seeking to make large-scale commercial use of the equipment in BellSouth's network would blindly expose itself to the risk that such use may infringe one or more vendor's intellectual property rights. As the U.S. Department of Justice concluded, "use of the claim of [third-party intellectual property] rights to place burdens on parties seeking access to unbundled elements has unreasonable consequences, potentially delaying and increasing the expense of entry." DOJ Okla. Eval. at 65. Further, the Commission, in an analogous context concerning section 259(a) expressly ruled that:

> [I]ncumbent LECs may not evade their . . . obligations merely because their arrangements with third party providers of information and other types of intellectual property do not contemplate -- or allow -- provision of certain types of information to qualifying carriers. Therefore, we decide that the providing incumbent LEC must determine an appropriate way to negotiate and implement section 259 agreements with qualifying carriers, i.e., without imposing inappropriate burdens on qualifying carriers. In cases where the only means available is including the qualifying carrier in a licensing arrangement, the providing LEC will be required to secure such licensing by negotiating with the relevant third party directly. We emphasize that our decision is not directed at third party providers of information but at providing incumbent LECs. We merely require the providing incumbent LEC to do what is necessary to ensure that the qualifying carrier effectively receives the benefits to which it is entitled under [the Act].

Infrastructure Sharing Order ¶ 70 (emphasis added).

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[17] Indeed, the Commission has recognized that the sharing of network facilities is unlikely to infringe the intellectual property rights of other parties (see Infrastructure Sharing Order) and BellSouth and other ILECs have for years provided customers with access to most network elements in other, materially indistinguishable ways without ever claiming that such access violated any other party's intellectual property rights. See generally Comments of AT&T Corp., In the Matter of Petition of MCI for Declaratory Ruling, CC Docket No. 96-98 at 22-28 (April 15, 1997).

The nondiscrimination requirement of section 251 mandates the same outcome here.[18] Moreover, by virtue of its superior access to its contracts, its unique knowledge of the circumstances surrounding contract negotiations, and its existing relationships and bargaining power with its vendors, BellSouth is clearly in the best position to address expeditiously any concerns that its vendors may raise. By claiming that CLECs must secure third-party authorization in order to obtain commercially responsible access to its network elements, BellSouth has failed to provide nondiscriminatory access to these elements.

D. BellSouth Does Not Provide Nondiscriminatory Access To Interconnection

BellSouth has also failed to provide AT&T with access to interconnection on "just, reasonable, and nondiscriminatory" terms and conditions and that is "at least equal in quality" to what BellSouth provides itself. § 251(c)(2)(C), (D); see § 271(c)(2)(B)(i); 47 C.F.R. §§ 51.305(a)(3), (5). These deficiencies, together with restricted access to number portability, directory listings, and OSS, have been particularly harmful to AT&T's efforts to market AT&T Digital Link ("ADL"), a facilities-based service for large business customers. Hassebrock Aff. ¶¶ 4-10, 25-70.

In its initial phase, ADL allows a customer to route outbound local calls over the dedicated facilities between its PBX and an AT&T toll switch. Hassebrock Aff. ¶ 14. To offer the customer the ability to place 800 and 888 ("8YY") calls over these facilities, and to receive inbound local calls, AT&T and BellSouth need to deploy a substantial additional trunking infrastructure between AT&T's ADL switches and BellSouth's network. Id. ¶¶ 15-17.

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[18] AT&T and others also have made clear that all carriers (new entrants and incumbents) should pay their share of the costs associated with obtaining necessary third-party intellectual property licenses or license modifications, as with the costs of any other component of the incumbent's local network. Comments of AT&T Corp., In re Petition of MCI for Declaratory Ruling, CC Docket No. 96-98, at 17 (April 15, 1997).

BellSouth, however, has delayed providing crucial interconnection trunks, has intentionally shut down AT&T trunks, and has failed to program routing instructions in its switches so that calls to AT&T customers are properly routed. Id. ¶¶ 27-33.

In particular, despite detailed planning with BellSouth in preparation for AT&T's roll-out of in-bound calling in Florida, BellSouth waited until two days before the necessary trunks were due to be delivered before informing AT&T that delivery would be delayed for 30 days because of overwhelming trunk demand by other CLECs. Id. ¶ 28. Because of BellSouth's inability to meet demands that were forecasted and planned for in advance, AT&T was forced to delay its trial and delay its roll-out of inbound service. Id. In another episode that demonstrates a new entrant's complete dependence on the incumbent LEC, and BellSouth's indifference to competition, BellSouth shut-down all of AT&T's 8YY trunks in Georgia for alleged non-payment of charges for which AT&T had never been billed, and for which a shutdown was in any case contrary to the contractually provided remedy. Id. ¶ 29. Finally, despite numerous complaints by AT&T, BellSouth has failed correctly to route certain calls to AT&T customers (those using AT&T NPA/NXXs), resulting in call-blocking and double-billing problems. Id. ¶¶ 30-33.

E. BellSouth Is Not In Compliance With The Commission's Number Portability Regulations

BellSouth also has failed to demonstrate "full compliance" with the Commission's "regulations" on number portability. § 271(c)(2)(B)(xi); see 47 C.F.R. § 52.27; Telephone Number Portability Order. Under the Commission's regulations, interim number portability must be provided "to the extent technically feasible, without impairment of quality, reliability and convenience." Id. ¶ 115. BellSouth has not met this standard.

Number portability is essential to facilities-based local exchange service, including AT&T's inbound offer of ADL. Hassebrock Aff. ¶ 35. BellSouth has made it virtually impossible, however, for AT&T to order interim number portability for its customers. As discussed above, BellSouth's unilateral system changes and failure to develop and distribute key business rules has made it impossible for AT&T to transmit orders to port numbers for additional lines for existing ADL customers. See pages 35-37 supra; see Bradbury Aff. ¶¶ 89-109; Hassebrock Aff. ¶¶ 36-47. The severe consequences of this single default dramatically illustrate the need for reliable number portability. Id. ¶¶ 7, 38, 46-47.

In addition, BellSouth has now unilaterally revoked its prior commitment to a 6-week interval for provisioning interim number portability via Route Index - Portability Hub (RI-PH) and has not committed to a new fixed interval, thus delaying AT&T's entry and increasing the risk of customer outages when service is transferred. Hassebrock Aff. ¶ 48. BellSouth also insists on imposing and directly billing AT&T's customers for exorbitant non-cost based charges for porting fewer than 20 numbers at a time, in violation of the Commission's "incremental cost" standard. Id. ¶¶ 49-53. BellSouth has not yet developed the capability of processing orders (whether electronic or manual) from AT&T to disconnect interim number portability arrangements for ADL customers, thus greatly increasing the risk of double-billing and other problems when customers stop service at a particular location. Id. ¶¶ 54-55. Finally, BellSouth is virtually guaranteeing that the transition to permanent number portability will degrade competitors' service, because it is refusing to let carriers send electronic test orders before the new system is cut over on August 31, 1998. Id. ¶¶ 56-58.

F. BellSouth Does Not Provide White Pages Directory Listings For AT&T's Customers

Another checklist item essential to successful facilities-based service to both residential and business customers is the ability to provide customers white pages listings. § 271(c)(2)(viii). Any competitor that cannot provide listings identical to those that the incumbent provides, have them integrated with the incumbent's listings, and have them delivered with the same accuracy and reliability that the incumbent can, will suffer severe competitive disadvantages in the market. Hassebrock Aff. ¶ 59.

For ADL customers, a complex directory listing (one that includes direct numbers for various departments or branches as well as a main number) is often essential. Hassebrock Aff. ¶¶ 62-63. Yet at the time of its application, BellSouth was unable to process even a manual order for such listings, and BellSouth has never developed the capability fully to process such orders electronically. Id. ¶¶ 63-65. In addition, BellSouth remains unable to process any directory listings orders for valid telephone numbers that AT&T has assigned from the LERG (as opposed to numbers ported from BellSouth) without a cumbersome manual process that introduces risks of errors and delay. Id. ¶¶ 66-70. For all of these reasons, BellSouth has not fully implemented its duty to provide white pages listings.

G. BellSouth Does Not Provide Nondiscriminatory Access To Directory Assistance Data

BellSouth also fails to provide CLECs with nondiscriminatory access to its directory assistance data in accordance with sections 271(c)(2)(B)(vii), 251(b)(3) and 251(c)(3). CLECs are entitled to "at least the same quality of access" to directory assistance information that BellSouth enjoys. Local Competition Second Report and Order ¶ 142. BellSouth's SGAT expressly denies CLECs such access, offering directory assistance options only "on the same

terms as they are currently offered to other telecommunications providers." SGAT, § VII.B.2. This limitation is significant. For example, although BellSouth must share its subscriber listing information in "'readily accessible' tape or electronic formats" (Local Competition Second Report and Order ¶ 141), AT&T's understanding is that BellSouth does not provide CLECs with nonpublished listing indicators in the "extracts" it provides of its directory assistance database. See Coutee Aff. ¶ 11. Without such information, a CLEC operator can only report to a customer that it "can't find" the directory listing. By contrast, a BellSouth operator can tell the customer that the requested number is unlisted. The obvious difference in perceived carrier competence that would be conveyed to local customers can only damage a CLEC's ability to compete.[19]

H. BellSouth Is Not Providing Unbundled Network Elements At Cost-Based Rates

As a precondition to providing interLATA services in Louisiana, BellSouth must provide interconnection and unbundled network elements at rates that are "just, reasonable and nondiscriminatory" (§ 251(c)(2)) and "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable)." § 252(d)(1)(A)(i); see § 271(c)(2)(B)(i), (ii). In its Local Competition Order, this Commission, like state commissions nationwide, determined that these

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[19] In addition, BellSouth's price for an extract of its directory assistance database also far exceeds costs. BellSouth assesses a per-listing recurring charge of $0.0443 and a monthly recurring charge of $90.54 to CLECs receiving BellSouth's directory assistance database extract. SGAT, Att. A at 11. Yet, BellSouth's costs of providing this data include only the cost of the medium employed (e.g., the price of a magnetic tape) and the nominal labor involved in making and transmitting the copy. At least one ILEC, GTE, has agreed with AT&T that the charge for this database copy will be equal to the cost of the tape itself and the cost of preparing and sending the magnetic tape. See Interconnection, Resale and Unbundling Agreement between GTE California Incorporated, CONTEL of California, Inc. and AT&T Communications of California, Inc., January 23, 1998, § 19.1.